

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 89 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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STATE OF GUJARAT & ANR.

Versus

KESHAVLAL CHUNILAL MALI & ORS.  
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Appearance:

Shri A.G. Uraizee, Asst. Govt. Pleader, as  
instructed by Shri D.A. Bambhania, Government  
Solicitor, for the Petitioners

Shri P.M. Thakkar, Senior Advocate, for Messrs.  
Thakkar Associates, for Respondents Nos. 1, 2 and  
3

Shri U.R. Bhatt, Asst. Govt. Pleader, for  
Respondent No. 4  
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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 12/08/96

ORAL JUDGEMENT

The order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 4 herein) on 11th October 1993 in Appeal No. Vadodara-45 of 1993 is under challenge in this petition under Art. 226 of the Constitution of India at the instance of the State Government. By its impugned order, respondent No. 4 accepted the appeal of respondents Nos. 1 to 3 herein and quashed and set aside the order passed by the Competent Authority at Vadodara on 19th April 1988. By his impugned order, the Competent Authority rejected the application made by and on behalf of respondents Nos. 1, 2 and 3 herein on 2nd September 1987 under sec. 21(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief).

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round one parcel of land bearing survey No. 154(part) admeasuring 2883 square meters situated at village Savad within the urban agglomeration of Vadodara (the disputed land for convenience). The disputed land enjoyed exemption under sec. 20(1) of the Act by virtue of the order passed by and on behalf of the State Government on 23rd June 1979. That exemption came to be withdrawn by one order passed by and on behalf of the State Government on 25th August 1985. Thereafter respondents Nos. 1, 2 and 3 herein applied on 2nd September 1987 for permission under sec. 21(1) of the Act qua the disputed land. By the order passed by the Competent Authority on 29th April 1988, their application for permission under sec. 21(1) of the Act came to be rejected. Its copy is at Annexure B to this petition. That aggrieved respondents Nos. 1, 2 and 3 herein. They carried the matter in appeal before respondent No. 4 under sec. 33 of the Act. It came to be registered as Appeal No. Vadodara-45 of 1993. By the order passed on 11th October 1993 in the aforesaid appeal, respondent No. 2 accepted the appeal and quashed and set aside the order at Annexure B to this petition and remanded the matter to the Competent Authority at Vadodara for his fresh decision according to law in the light of the observations made therein. Its copy is at Annexure A to this petition. That aggrieved the State Government. It has therefore questioned its correctness by means of this petition under article 226 of the Constitution of India.

3. As rightly submitted by Shri Thakkar for respondents Nos. 1, 2 and 3, this Court ordinarily does not interfere with the order of remand. By the impugned appellate order at Annexure A to this petition, respondent No.4 has remanded the matter to the Competent

Authority at Vadodara to decide the application afresh as the land-holder had applied for exemption under sec. 20(1) of the Act qua the disputed land on 13th August 1976. In view of rule 11 of the Urban Land (Ceiling and Regulation) Rules, 1976 (the Rules for brief) framed under the Act, the time-limit for an application under sec. 21(1) of the Act is 1139 days inter alia from the date exemption under sec. 20(1) of the Act comes to an end. As pointed out hereinabove, the exemption came to an end some time on 25th August 1985 and the application for permission under sec. 21(1) of the Act was made within 1139 days therefrom on 2nd September 1987. Since the matter is found to have been remanded by respondent No. 4 to the Competent Authority of Vadodara by the impugned appellate order at Annexure A to this petition for reconsideration in view of the aforesaid provisions of rule 11 of the Rules, I think it would be in the fitness of things not to interfere with the order of remand at this stage.

4. There is another hurdle in the way of the petitioner so far as this petition is concerned. The impugned order at Annexure A to this petition was the subject-matter of Special Civil Application No. 195 of 1996 at the instance of the land-holder, that is, respondents Nos. 1, 2 and 3 herein. By its order passed on 10th January 1996 in Special Civil Application No. 195 of 1996, this Court has chosen not to interfere with the impugned order at Annexure A to this petition while disposing of Special Civil Application No. 195 of 1996 decided on 10th January 1996. It would mean that the impugned order at Annexure A to this petition has been affirmed by this Court in the aforesaid writ petition. This petition appears to have been filed on 8th January 1996. The petitioner appears to be unmindful of the order passed by this Court on 10th January 1996 in Special Civil Application No. 195 of 1996. It is true that the impugned order at Annexure A to this petition has been affirmed at the instance of respondents Nos. 1, 2 and 3 herein. However, since this Court did not think it fit to interfere with the order on remand and it has affirmed the impugned order at Annexure A to this petition by means of its order passed on 10th January 1996 in Special Civil Application No. 195 of 1996, I think the same reasoning should apply for the purpose of this petition.

5. Even otherwise, the appellate authority cannot be said to have made any error or mistake in its impugned order at Annexure A to this petition. The Competent Authority appears to have disposed of the application

under sec. 21(1) of the Act qua the disputed land on the ground that it was not made before 31st May 1979. He overlooked proviso (b) to rule 11 of the Rules. As pointed out hereinabove, the aforesaid provision in the Rules enables the land-holder to make an application within 1139 days inter alia from the withdrawal of exemption under sec. 20 of the Act. What respondent No. 4 has done by its impugned order at Annexure A to this petition is to remand the matter with a direction to examine the question in the light of the aforesaid provision contained in rule 11 of the Rules. Respondent No. 4 cannot be said to have exceeded its jurisdiction or has in any way passed any illegal order in the matter.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition calls for no interference by this Court in this petition under art. 226 of the Constitution of India. This petition therefore deserves to be rejected.

7. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs.

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